

**DECISION RECORD  
AND  
FINDING OF NO SIGNIFICANT IMPACT  
ON THE  
AMERICAN COLLOID COMPANY AMENDMENT #11  
TO PLAN OF OPERATIONS MTM 77811  
CARTER COUNTY, MONTANA  
EA# MT-020-2007-194**

**SUMMARY OF THE PROPOSAL**

The American Colloid Company has submitted a proposal to the BLM Miles City Field Office and the Montana DEQ to amend its mine plan for bentonite mining, near Alzada in Carter County, Montana. The amendment would add 567.5 acres, of which 299.8 acres would be federal (BLM) surface and 267.7 would be private surface. About 160 acres will be disturbed by mining with 66.8 acres on private surface and 92.9 acres on BLM surface.

The American Colloid Company is headquartered in Belle Fourche, S.D. and has been mining bentonite in the Alzada area since 1977. Permit #00297 currently contains 5,224 acres. (Figure 1.1) Approximately 2,014 acres have been disturbed by mining within the current permit boundaries – 1,496 acres have been reclaimed through the seeding stage and about 518 acres are currently under some phase of mining. In addition, 1,466 acres have been fully released from bond and removed from the permit, 323 acres of which were disturbed and reclaimed.

The proposed action requiring a decision by BLM would involve approving the addition of the identified BLM lands into the current Plan of Operations with the attendant mining haul road construction, hauling of ore and the reclamation of all disturbed areas.

**BACKGROUND**

The permit area includes both private and federal lands; therefore, the mining is regulated by both the Bureau of Land Management and the Montana Department of Environmental Quality. BLM and DEQ have determined that one Environmental Assessment (EA) would be prepared to satisfy requirements of both the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA).

The preparation of the EA was done by both the BLM and DEQ acting as co-leads. As co-leads, the agencies were responsible for developing the alternatives, coordinating with the proponent, conducting the analysis, and conducting consultations. The co-lead also ensured that the analysis and resulting document fulfills each agency's needs as required by the various Federal and State acts, laws, and regulations that pertain to the project.

However, the Decisions are being issued separately by each agency. Therefore, this decision applies only to the Federal lands managed by BLM which are included in Amendment #11. This is because the Federal authority for locatable minerals, under the surface management regulations, extends only to federally owned surface or to some split estate lands, obtained under the Stock Raising Homestead Act.

## DECISION

Based upon the analysis of potential environmental impacts described in the Environmental Assessment, it is my decision to select Alternative A – American Colloid’s Proposed Action. This includes mitigation identified in the attached EA, the existing Plan of Operations as well as American Colloid’s Amendment #11 mine plan submittal.

This decision does not include the privately owned lands as those lands are not subject to the federal mining regulations (Surface Management Regulations, 43 CFR 3809).

Approved project components include:

- Adding 299.8 acres of federal lands managed by the BLM to the Plan of Operations of which, 92.9 acres will be disturbed by mining.
- Mining and reclaiming those lands in accordance with the mine plans, 43 CFR 3809 regulations and the Montana Opencut Act.
- Measures to avoid or minimize environmental harm.
- Issuing a right-of-way for an existing graveled road to the grazing permittee subject to stipulations identified in Appendix 2 of the EA.

The approval of Amendment #11 is subject to mitigation measures identified in the EA, the existing plan of operations, and those measures specifically designated in the Amendment #11 submittal. These mitigation measures as well as the regulations found at 43 CFR 3809 and the State of Montana Opencut Act contain all practicable means to avoid or minimize environmental harm. One measure designated in the EA which will be attached to the approval as a stipulation that we wish to highlight in this decision is as follows:

*In the event that buried cultural resource values are located during earth disturbing activities, the individual/ operator/contractor shall immediately bring to the attention of the BLM Field Manager any and all antiquities or other items of cultural or scientific interest, including but not limited to historic or prehistoric ruins, fossils, artifacts or burials, discovered as a result of his operations. The Miles City Field Office must be notified and operations must cease if any archaeological or paleontological resources are discovered as a result of operations, and shall leave such discoveries intact until told to proceed by the BLM Field Manager. Operations may resume only after receipt of BLM approval. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Operator shall suspend all operations in the immediate areas of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The operator will be responsible for the cost of evaluation and any decision as to proper mitigation measures to be made by the authorized officer after consulting with the operator.*

- *The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials*

*are uncovered during construction, the operator is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO). Within five working days the AO will inform the operator as to:*

- whether the materials appear eligible for the National Register of Historic Places;*
- the mitigation measures the operator will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,*
- a timeframe for the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate.*

*If the operator wishes, at any time, to relocate activities to avoid the expense of mitigation and/or the delays associated with this process, the AO will assume responsibility for whatever recordation and stabilization of the exposed materials may be required. Otherwise, the operator will be responsible for mitigation costs. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the operator will then be allowed to resume operations.*

### **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

On the basis of the information contained in the Environmental Assessment and all other information available to me, I have determined that Alternative A – *American Colloid's Proposed Action* with mitigation identified in the attached EA and existing Plan of Operations, which I have selected, will not have significant effects on the human environment. Therefore, an environmental impact statement is unnecessary and will not be prepared.

### **MANAGEMENT CONSIDERATIONS/RATIONALE FOR THE DECISION**

My FONSI determination on American Colloid Company's Amendment #11 is based upon a number of factors, including careful consideration of the relevant issues listed in the EA.

#### **Public Involvement**

Copies of the EA and an unsigned FONSI were mailed out to affected landowners, mining companies, County Commissioners, Conservation District Board members and interested individuals for a thirty day review and comment period. The EA was also posted to the Miles City Field Office internet web page for public availability purposes.

#### **Consistency with Land Use Plan**

This decision is in conformance with the overall planning direction for the area. The Powder River RMP Record of Decision of 1985, states on page 2 “(Locatable Minerals) Mineral exploration and development in the Resource Area will continue to be administered through existing surface and mineral management regulations.”

#### **Grazing Resources**

Mining on Amendment #11 will eventually result in the suspension of 59.2 AUMs within the S&L Sheep Ranch Permit.

It should be noted that the proposed mining will not take place all at one time, but over a period of perhaps several years. The mining will follow a logical progression of mine pit advancement with concurrent reclamation (backfilling, top soiling and seeding). The newly seeded areas will be fenced out from the pasture and will follow much the same progression as the mining. The fences will be constructed, as much as possible, on the edge of the newly reclaimed land. Therefore, neither the mining nor the fencing will occur all at once but will occur gradually over a period of years. Likewise, BLM will gradually adjust the grazing permit to reflect the reality of land taken out of production within the pasture and could ultimately reach a total of 59.2 AUM's.

It has been our observation that livestock adapt well to the presence of the bentonite mining operations and simply tend to avoid the active areas. During the active mining phase, livestock should be able to move around the active mining, since the areas are relatively small, to gain access to most of the traditional areas they have always had access to.

I do not believe that BLM's approval of Amendment #11 will result in significant impacts to the grazing resources or livestock operators.

### **Surface Water**

BLM's approval of Amendment #11 will not significantly impact water quality. The EA, mine plan, and state and federal regulations contain sufficient mitigative measures, regulatory requirements and enforcement authority to ensure that water quality will not be significantly impaired. Sedimentation prevention and erosion control best management practices, such as culverts, sediment traps, ditches and berms, sediment fences, and concurrent reclamation are all employed at the mine. In addition, the mine is inspected on a regular and routine basis by both federal and state mine inspection officials who are responsible for ensuring appropriate sediment and erosion control practices are followed.

The Amendment #11 mine plan submittal does not call for ponds to be constructed. However, that does not preclude this from occurring at a later date if a landowner wishes to have a pit left as a livestock pond. Should a permittee wish to have a new pond on BLM lands after this plan amendment is approved, American Colloid Company would have to make a modification to the BLM Plan of Operations. The modification would then be classified as a minor or major modification by BLM, depending on the size and scope of the proposed change. A minor modification can be approved via a letter and a major modification would require a more in depth environmental analysis.

BLM would thoughtfully consider such a request and render a decision at such time as the request was received.

The State of Montana DEQ does not necessarily require a plan change unless the size and scope of a proposed pond necessitates it.

### **Wildlife Resources**

Direct impacts to wildlife resources include loss of habitat through construction activities, location of infrastructure (haul roads, mine pits, etc), and mortalities resulting from collisions with vehicles. A number of small animals, such as small mammals and reptiles, which cannot quickly leave the area will be destroyed by the mining operations.

The proposed action would add 567.5 acres to ACC's plan of operations, of which approximately 167 acres would be disturbed by mining operations. This is a direct temporary loss of 160 acres of wildlife habitat (both forage and cover). Successful reclamation would stabilize disturbed sites and attempt to restore disturbed areas to pre-disturbance conditions. Therefore, long term impacts to wildlife habitat will be minimal.

There are no known grouse leks within the project area boundary; therefore, impacts to sage grouse will not be significant.

No known threatened or endangered wildlife species will be affected by ACC's operations and no critical habitats for wildlife species are present or will be affected by mining.

Based on the above and information in the EA I conclude that impacts to wildlife resources will not be significant from the selected alternative.

### **Air Quality**

The air quality impact analysis did not identify any pollutant concentrations that will be in violation of the applicable air quality standards from the existing or proposed mining operations. In addition, dust suppression on haul roads will continue to be employed to reduce fugitive dust sources.

### **Cultural Resources**

Two historic cultural sites which are not eligible for the National Register were located during the surveys conducted on Amendment #11 lands; therefore, ACC's mining activities should have no impact on important cultural resources. In addition, if buried cultural sites are discovered the operator is required to cease operations and notify the BLM so that the site can be evaluated and or protected.

We believe the comment we received from the Rosebud Sioux Tribe stating that they "...have concerns for this project to proceed as planned." and "The Rosebud Sioux Tribe objects to any kind of mining" is not a substantive comment BLM can respond to as it lacks specificity regarding cultural issues or other concerns.

In addition, Curly Youpee, Director of the Cultural and Historical Resources Committee of the Fort Peck Tribes asked that a stipulation be included in the Decision Record specifying how to treat incidental finds of burials and cultural materials. The above italicized stipulation is the standard stipulation attached to all authorizations that protects inadvertent finds after the issuance of a notice to proceed. We believe this stipulation is adequate and provides sufficient protection to subsequent finds that might include human burials.

Based on the above inventory results I conclude that impacts to cultural resources will not be significant from the selected alternative.

### **Social and Economic Conditions**

During the course of this analysis, no alternative considered resulted in any identifiable effects or issues specific to any minority or low income population or community. The agency has considered all input from persons or groups regardless of age, race, income status, or other social or economic characteristics.

Therefore, I conclude that impacts to social or economic resources will not be significant from the selected alternative.

### **Cumulative Impacts**

The analysis in the attached EA did not identify any significant impacts that will result from approval of Amendment #11 in combination with the cumulative actions listed in the EA in section 4.2.

Resources for which cumulative impacts are most likely to extend outside the project area include air and water quality. The impact analysis in the EA considered these cumulative actions and I have determined that they are not significant.

### **APPEAL PROCESS**

Within 30 days of receipt of this decision, any party adversely affected by the decision of the BLM Authorized Officer may request a BLM State Director review of the decision or may bypass State Director review and appeal directly to the Interior Board of Land Appeals (IBLA), Office of Hearings and Appeals, in accordance with the appeals procedures at 43 CFR 3809.800. Appeals to IBLA must be filed within 30 days with the BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Requests for BLM State Director review must be sent to the BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107. The appellant has the burden of showing that the decision appealed from is in error.

Under the regulations in 43 CFR 3809.803, this decision is in effect immediately and remains in effect while appeals are pending before IBLA unless IBLA grants a stay under 43 CFR 4.21(b). Similarly, under 43 CFR 3809.808 the original BLM Authorized Officer's decision remains in effect while the State Director review is pending, unless the State Director stays the decision during the pendency of the review.

**Field Manager**  
**Miles City Field Office**

**Date**